Acta Univ. Sapientiae, Legal Studies, **7**, 1 (2018) 5–29

Impacts of European Law on the Rules of Remedy of the New Code of Hungarian Civil Procedural Law

Katalin GOMBOS
Associate Professor
National University of Public Service, Budapest
E-mail: simonne.gombos.katalin@uni-nke.hu

Abstract. The adoption of the new Code of Hungarian Civil Procedural Law (Act CXXX of 2016) was motivated by the aim of regulating the legal framework of private enforcement before courts by modern procedural rules in accordance with international and European Union tendencies. The provisions of procedural guarantees in the field of remedies and related proceedings are especially important due to their connection to fundamental rights. The new Act includes – both in the fields of ordinary and extraordinary remedies – conceptually new rules as well as fundamental rights guarantees and new legal instruments among the traditionally accepted provisions.

Keywords: civil procedural law, ordinary and extraordinary remedies, fundamental rights, guarantee provisions

1. Introduction

When a party to proceedings is affected by a violation of fundamental rights during the procedure conducted by the court and/or the legally binding decision rendered as a result, legal literature has dedicated significant resources to determining ways to settle such situations by some form of procedural remedy.[1] During the establishment of the rules of the new Code of Hungarian Civil Procedural Law prescribing the forms of remedy,[2] the judicial practice on fundamental rights of the European Court of Human Rights (ECtHR),[3] the Court of Justice of the EU[4]

1 Hungarian law differentiates between remedies in administrative procedures and remedies during court (usually) litigious procedures. Litigation remedies mean the kind of remedies which apply during the court procedure.
2 Act no CXXX of 2016 on the Code of Civil Procedure.
3 Hereinafter as: ECtHR.
4 Comprehensively upon the matter of European legal remedies, see: Dougan 2004.

(CJEU),[5] and the Hungarian Constitutional Court[6] (HCC)[7] had significant impact. Moreover, the novel rules of European countries established within this field and the opportunity for the introduction of dynamic new instruments for the protection of rights during the procedure into Hungarian law have all affected the final legislative result.

2. Influences That Mobilized the Legislator

In case no 30789/05, which is the case of Ferenc Rózsa and István Rózsa v Hungary, the ECtHR declared it in its judgment that the State of Hungary had violated Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: the Convention or ECHR).[8] According to the reasoning of the decision, the courts violated the applicants' fundamental right to access to justice.[9] The ECtHR – referring to its former practice – noted that if an individual's access to justice was denied in a way which is incompatible with the Convention's requirement of fairness, a reopening or a review of the case, if requested, principally represents an appropriate way of redressing such a violation.[10] The particular decision was not one of the so-called pilot judgments,[11] which means that a direct duty for legislation was not implied; however, it was a powerful stimulant for procedural-law-related measures subsequent to the ECtHR judgment declaring the infringement of fundamental rights for the problem to be tackled by new rules of Hungarian procedural law. It is implied from the decision of the ECtHR that it may become necessary to conduct one of the 're-examination' or 'reopening' proceedings to remedy the applicant's injury of rights, which was not possible upon the basis of the set of Hungarian procedural law rules formerly in force.

On 19 January 2000, the Committee of Ministers of the Council of Europe on its 694th session dealt with similar matters and adopted the Recommendation to the Member States on the re-examination or reopening of certain cases at domestic

5 Hereinafter as: CJEU.
6 For more details, see: Tatham 2013.
7 Hereinafter as: HCC.
8 Hereinafter as: the Convention, promulgated by Act no XXXI of 1993 in Hungary.
9 The right to a fair trial.
10 See: Öcalan v Turkey [GC] no 46221/99. §§ 207–210, ECHR 2005-IV.
11 The essence of the pilot judgment is that if any systemic or structural failure to the legal order of an accused state can be identified and if this malfunction shall result in the anticipation of a further volume of similar repetitive cases to be submitted to the Court, the Court may select one or more of such cases for priority treatment. The Court shall expose the error or deficiency of the national law which caused the mass breach of fundamental rights. In addition, the Court has to show as well which are the legal remedies to be provided at the national level so that the states could be enabled to execute the measures imposed by the Court's judgment. In case of the state's failure to comply, the Court shall be entitled to judge upon all of the similar cases in progress.

level, following judgements of the ECtHR (hereinafter: Recommendation).[12] In certain circumstances, the above-mentioned obligation may entail the adoption of measures other than just satisfaction awarded by the ECtHR in accordance with Article 41 of the ECHR. This rule ensures that the injured party is put, as far as possible, in the same situation as enjoyed prior to the violation of the ECHR (*restitutio in integrum*).

The practice of the Committee of Ministers in supervising the enforcement of ECtHR judgements shows that under exceptional circumstances the re-examination of a case or the reopening of proceedings has proven to be the most efficient but not the sole way of achieving *restitutio in integrum*. The recommendation encouraged Member States to review their domestic legal systems in order to ensure that adequate opportunities are available for the re-examination of the case – including the reopening of the proceedings – in cases in which the ECtHR found that there is a violation of fundamental rights or freedoms. This is especially true when the injured party continues to suffer very serious negative consequences resulting from the domestic decision at issue, which are not adequately remediated by just satisfaction and cannot be eliminated except by the re-examination or reopening of the initial case. The judgement of the ECtHR concluded that the domestic decision against which the applicants complained is, on its merits, contrary to the ECHR, or the violation is based on procedural errors or deficiencies, which places doubt on the outcome of the domestic proceedings to which the parties objected.[13]

The recommendation deals with the construction of procedural possibilities linked with the reparation of an injury of a right in accordance with the gravity of the infringement and not with fields of law. There is no doubt that in practice the majority of violations of rights provided for by the ECHR appear in the field of criminal law. However, it cannot be concluded that the re-examination or the reopening of proceedings may not become necessary in civil cases, as well.

This interpretation was further reinforced by the fact that 10 countries of the Council of Europe (hereinafter: CoE)[14] passed such civil procedural-law rules, which had met these criteria. A review was carried out in 2006, focusing on the enforcement of the recommendation. It showed that even in civil cases a construction of peculiar rules should take place in order to ensure the possibilities for the re-examination of the case – including the reopening of the proceeding as well – in case the ECtHR has established the violation of rights.[15]

12 Rec(2000)2/19 January 2000 of the CoE Committee of Ministers on the re-examination or reopening of certain cases at domestic level following judgments of the ECtHR (hereinafter as: recommendation).

13 See: recommendation.

14 Hereinafter as: CoE.

15 Reopening a case, retrial; Wiederaufnahme des Prozesses / des Verfahrens réouverture; de la procédure.

The 10 countries, where such civil procedural-law rules apply, are the following: Bosnia and Herzegovina, the Czech Republic, Estonia, the Netherlands, Poland, Latvia, Lithuania, Germany, Italy, Portugal, Romania, Switzerland, and Slovakia. Regarding the above-mentioned countries, the regulatory system of Switzerland is the most comprehensive.

2.1. Switzerland

Switzerland provided the possibility for retrial based on the judgement of the ECtHR as early as 1991. At present, the applicable provisions can be found in the Federal Act of 17 June 2005 on the Federal Court. According to this Act, a motion for retrial may be filed against the decision of the Federal Court on the basis of a breach of the ECHR once the ECtHR has delivered a legally binding judgement upon the violation of the ECHR or any of its Protocols. Moreover, if the injury cannot be remediated by the mere satisfaction of damages, retrial is necessary for repairing the injury.[16] The rule has set up a relevant time limit, so the claim for retrial may be filed at the Federal Court within no more than 90 days from the final judgement of the ECtHR,[17] as per Article 44 of the ECHR.[18] According to the general rules of retrial, if the Federal Court does not find the claim for retrial inadmissible (impermissible) or unfounded, it informs the court of the initial case, the possible other parties or other participants of the given proceeding, and also the authorities affected by the case. The Federal Court addresses them to disclose their views to it within a given deadline.[19] If the Federal Court accepts the arguments listed in the claim for retrial, it annuls (voids) the decision and renders a new one.[20] If the Federal Court annuls a decision which ordered the court having acted on a lower level to conduct a new proceeding, then it also decides over the impacts of the annulment by the new decision rendered by the court having acted on a lower level in the meantime.[21]

In Switzerland, the proceedings of retrial following a judgement of the ECtHR have established a practice by now, which shows, on the one hand, that this extraordinary remedy possibility does not produce its effects automatically and, on the other hand, that, moreover, the legal institution fulfils a peculiar remedial function. In the Hertel case of 1998,[22] the ECtHR declared that the judgements

16 Federal Act of 17 June 2005 on the Federal Court, Article 122.
17 Practically, this means the gaining of ultimate binding force, that the provision is directly enforceable following this.
18 Federal Act of 17 June 2005 on the Federal Court, Article 124.
19 Same as above. Article 127.
20 Same as above. Article 128. (1).
21 Same as above. Article 128. (2).
22 Case of Hertel v Switzerland (59/1997/843/1049), Judgment 25 August 1998, Application No 25181/94.

of Swiss courts, having prohibited the applicant from stating in public that microwave ovens are a hazard to health and also that they have carcinogenic effects, violated Article 10 of the ECHR.[23] With respect to this, the applicant filed a claim for retrial. The Federal Court rejected the claim for retrial since it did not assess the retrial as indispensable to redressing the injury nor did it deem necessary to void the above-mentioned prohibition entirely. Instead, it declared that, in accordance with the judgement of the ECtHR, the prohibition shall be applied in the future in such a manner that the applicant may not state the above content in public without making reference to dissimilar views. In addition, he may also not propagate his statements as scientifically proven facts without referring to dissimilar views. The Federal Court rejected the request for review against this decision (rejecting the claim filed for retrial by keeping the original prohibition in a modified form adjusted to the judgement of the ECtHR) as manifestly ill-founded.

In the Losonci case of 2010,[24] there was a debate over the choice of the marital surname of a husband, who was a Hungarian national, and his wife, a Swiss national. The Swiss courts did not allow the married couple to keep their own, original surnames, whereas in the reverse situation, namely with a Swiss husband and a Hungarian wife, there would have been no impediment to keeping the original surnames. The ECtHR declared the violation of Article 14 of the ECHR[25] in connection with Article 8 of the ECHR.[26] The Federal Court acknowledged the claim for retrial and has partially annulled its own earlier decision and furthermore ordered the Registry of Births, Deaths, and Marriages to register the husband's original surname (Losonci).

2.2. Germany

According to the amendment of the German civil procedural act (ZPO) in 2006,[27] a claim for retrial[28] may be submitted if the ECtHR declares the injury to the ECHR or any of its ancillary protocols, and the judicial decision (against which the retrial has been requested) is founded on this violation.[29] A claim for retrial is to be submitted no later than a time limit of one month from the date of recognition of the circumstance supplying the reason for retrial (but at the earliest beginning from the date on which the judgement became binding). In general, a five-year

23 The right to freedom of expression.
24 Losonci Rose and Rose v Switzerland, Judgment 09 November 2010, First Section, Application No 664/06.
25 Prohibition of discrimination.
26 The right to respect for private and family life.
27 Zivilprozessordnung.
28 Wiederaufnahme.
29 ZPO § 580, point 8.

limitation period applies for claims for retrial but only if the basis of retrial is not a judgement of the ECtHR.

German rules include ancillary decrees as well,[30] a state contribution to the expenses (e.g. the costs of legal counsel, travel costs, etc.) of retrial based on a judgement of the ECtHR can be requested according to general rules.

2.3. Italy

The peculiarity of Italian Law is the so-called 'sentenza additiva', which may be rendered by the Constitutional Court. It is an ancillary decision, which is complementary to a given act of law or decree of law in order to make it comply with the Constitution. After such decision was passed down, the given legal norm may only be applied together with the addendum included in the 'sentenza additiva', regardless of whether the legislator has modified the text of the norm in accordance with the decision or not.

According to Decision No 113/2011 of the Italian Constitutional Court, Article 630 of the Italian Criminal Code determining the situations in which an application for retrial may be submitted, retrials are allowed also in cases where the ECtHR has declared a violation of Article 6 of the ECHR, namely the right to a fair trial. Following two ECtHR decisions condemning Italy in relation to the Italian Civil Litigation Act, the Italian Council of State initiated the constitutional examination of the relevant decrees of both the Italian Administrative Procedural Act and the Italian Civil Procedural Act.

2.4. The Czech Republic

Bearing in mind that the prerequisite for turning to the ECtHR is the exhaustion of all domestic remedies, which, in the case of the Czech Law means that the submission of a constitutional complaint is among those prerequisites, the Czech Law regulates retrial based on the ECtHR's judgment by means of the Constitutional Court Act. Basically, the constitutional complaint is the object of retrial. This particular possibility has been enabled since 2004 in criminal cases and since 2012 in any other case.

If the ECtHR decides in favour of the applicant in a case formerly examined by the Constitutional Court, the applicant may request the reopening of the case within not more than six months from the date of the ECtHR's decision. At the same time, the applicant may raise an objection as to the unconstitutionality of the legal text which underpinned the decision. The claim is inadmissible once the consequences of the violation no longer subsist and the just satisfaction of

30 Such ancillary rule is, for instance, the applicability of the statute on the contribution given by the State (EGMR-Kostenhilfegesetz) also to the decisions made by the ECtHR.

damages provided for by the ECtHR has either sufficiently redressed the injury or a sufficient remedy for the injury has been supplied in any other way. This does not apply if the public interest linked with retrial is stronger than the claimant's private interest; so, even if the private injury has been relieved, retrial is permitted. The Constitutional Court delivers its judgment over the claim on a full session, without any hearings. Should its prior decision conflict with the decision of the ECtHR, it renders the prior judgement void and delivers a new decision based on the judgment of the ECtHR.

The law only makes retrial possible based on a decision of the ECtHR (the re-examination of the constitutional complaint) – so, retrial effecting an out-of-court settlement or a unilateral declaration of the Government is not permitted. The Constitutional Court has, however, recently allowed retrial in two such cases, in which the proceedings have ceased based on the unilateral declaration of the Government.[31] In several cases, the ECtHR concluded that the Czech Constitutional Court had violated a rule of procedural law. After the correction of the procedural failures, identical decisions with the former ones of the Constitutional Court were delivered.

The practical problem with this system is that the ECtHR may also accept cases in which the Constitutional Court has not been involved, which means that no constitutional complaint was submitted.[32] Theoretically, retrial is not possible on the basis of the ECtHR's decision in such cases provided that the Constitutional Court pursues a strict application of the law.

2.5. Estonia

The Estonian Civil Procedural Act enables retrial if the ECtHR declares a violation of the Convention or any of its ancillary protocols, and reasonable remedy for the injury endured cannot be reached by any method other than retrial.[33] The administrative procedural law provides similarly. In terms of both civil and administrative cases, the claim for retrial has to be filed within no more than six months at the Supreme Court, which shall first decide over the admissibility of the claim, thereafter examine its relevance, and finally shall either reject the motion for retrial or annul the former decision. In the latter case, the Supreme Court shall order the lower court to conduct a new proceeding or shall deliver a new decision itself.[34]

31 It is yet to be noted that the claim was rejected in both cases as manifestly ill-founded.

32 E.g. the case of Buchen v the Czech Republic (36541/97; 26/11/2002, final: 26/02/2003).

33 Estonian Civil Procedural Act, point no 702. § (2) 8.

34 There has not been any example for the renewal of litigation in a civil case on the basis of the ECtHR's decision, and even in administrative cases there had only been one example to such renewal of litigation until 2015, when the ECtHR declared in relation to a refugee's proceeding that the Russian national who sought asylum had been held in custody for too long. The

2.6. Lithuania

The Lithuanian Civil Procedural Act enables retrial since 2002 in cases in which the ECtHR declares that the judgements or interim orders of Lithuanian courts violate the ECHR or any of its ancillary protocols. The claim for retrial – according to the general rules of the submission of a claim for retrial – is to be submitted at the Supreme Court within three months from the date of recognition of the circumstance which supplies the reason for retrial but not later than five years after the date the decision appealed via retrial has been rendered. The five-year limitation period is problematic since in many cases it usually takes longer for the ECtHR to deliver a judgment.

The Lithuanian Supreme Court decided in favour of a claim for retrial in one of its judgments delivered in 2005 despite the five-year limitation period having been exceeded and declared that in case of a claim for retrial submitted on the basis of the ECtHR's decision the five-year limitation period is non-applicable. A bill for amending the Civil Procedural Act is also underway, which would, in accordance with this decision, confirm that in the case of a claim for retrial filed on the basis of an ECtHR's decision the five-year limitation period is non-applicable.

Retrial based on a judgement of the ECtHR has taken place only four times since 2002.[35] In one of the cases, the Supreme Court decided to grant further compensation of damages beyond the satisfaction granted by the decision of the ECtHR. In another case, the Supreme Court declared the termination of the applicant's employment to be unlawful on the basis of the judgement of the ECtHR.[36] In a third case, the Supreme Court commenced a civil proceeding on the basis of the ECtHR's judgement that was previously rejected by Lithuanian courts referring to state immunity. The termination of employment was declared unlawful also in this case; moreover, compensation for damages was ordered. Lastly, the Supreme Court accepted a claim for retrial, in which it examined whether a further compensation of damages beyond the satisfaction granted by the ECtHR is justified.

As a practical issue related to Lithuanian cases, the particular practice of the ECtHR shows that in certain cases they shall grant lump-sum satisfaction for damages upon the grounds of equity. The question arises: beyond such a lump-sum satisfaction granted, to what extent is the provision of any further compensation of damages by national courts justified?

Estonian Supreme Court decided partially in favour of the claim for the renewal of litigation in accordance with the decrees of the decision of the ECtHR, and they annulled the former decisions made on a lower level.

35 Source: http://www.lat.lt/lt/titulinis.html (date of download: 24/06/2016).

36 On the basis of the legal ban on the employment of former KGB employees in the private sector, which was not against the Convention according to ECtHR.

2.7. Bosnia and Herzegovina

In 2009, the Act on Non-Litigious Proceedings of Brčko District[37] regulated that it is possible to submit a claim for retrial within no more than thirty days from the date on which the judgement of the ECtHR declaring a violation of the Convention or any of its ancillary protocols gained binding force. The court must decide in line with the contents of the judgement of the ECtHR in the new proceeding. In addition, in 2013, the Federal Act on Non-Litigious Proceedings was amended, and its only current difference when compared to the one of Brčko District is that it allows ninety days for the party to submit a claim for retrial. Out of the two other entities constituting Bosnia and Herzegovina (the Republic of Serbia, the Federation of Bosnia and Herzegovina), the first has amended its Non-Litigious Proceedings Act in concordance with the federal law.

So far, there have not been any examples of retrial based on a decision of the ECtHR but in 2014. Following the judgement rendered by the ECtHR in the case of Avdić and Others v Bosnia and Herzegovina,[38] the Constitutional Court amended its Rules of Procedure by introducing the rule that: once the ECtHR declares a violation of the 'right to a court' in relation to a proceeding undertaken in front of the Constitutional Court, the affected party may request a new proceeding from the Constitutional Court within a three months' subjective time limit or an objective deadline of six months' duration at most.

3. The Hungarian Situation

According to Article Q) § (2) of the Fundamental Law of Hungary[39] (formerly: The Constitution of the Republic of Hungary),[40] Hungary ensures concordance between international law and domestic law in order to fulfil its obligations imposed by international law. Pursuant to § (3) of the same Article, Hungary accepts the generally recognized rules of international law. According to the findings of the Constitutional Court[41] within the framework of the interpretation of § 7 (1) of Act XX[42] of 1949 (the above mentioned Constitution of the Republic of Hungary, which is not in force anymore; however, the current constitutional text contains a similar rule),[43] the domestic law, international treaties, and the

37 One of the three constituent entities of Bosnia and Herzegovina.

38 Avdić and Others v Bosnia and Herzegovina. Judgment: Strasbourg, 19 November 2013 (final: 19 February 2014), applications nos 28357/11, 31549/11, and 39295/11.

39 Fundamental Law of Hungary (25 April 2011).

40 Act no XX of 1949.

41 See: HCC.

42 The Constitution of the Republic of Hungary.

43 As per which the legal system of the Republic of Hungary adapts to the generally acknowledged

Constitution must be examined altogether in correlation.[44] The State of Hungary must fulfil its undertaken duties by constructing domestic rules that settle the occurring situation in concordance with the Constitution.[45] The Republic of Hungary has joined the ECHR and its ancillary protocols. The Convention became ratified as well as adopted in Hungarian Law via Act no XXXI of 1993, including Article 6 of the ECHR declaring the 'right to a fair trial' and Article 13 affirming the 'right to an effective remedy'. According to the interpretive practice of international judicial forums, the term 'effective remedy' covers not just appeal procedures but all other legal instruments that make it possible to repair a violation of rights through legal instruments. The ECtHR is in no way an appellate forum for national courts, and so the revision of the decisions made by national courts does not fall under the scope of its operation. The judgments of the ECtHR declaring the violation of a fundamental right do not result in the automated retrial of the affected proceedings, and such a procedural rule is not justified to be implemented in general, without any restrictions. However, after reading the ECHR and the Article of the Hungarian law on ensuring efficient legal remedies,[46] along with the judgements of the ECtHR – also considering Recommendation no (2000) 2 by the Committee of Ministers to the CoE –, it could be concluded that the initiation of the retrial on the applicant's request can provide a sufficient instrument of legal remedy for the elimination of the injury.

3.1. The Instruments of Protection of Fundamental Rights in the Rules of the New Hungarian Procedural Law

3.1.1. The Retrial

While codifying the new Hungarian Code on Procedural Law, it was an important aspect to align the new rules with the above criteria; moreover, to restructure the Hungarian system of procedural remedies on the basis of a comparative analysis of functioning European procedural law rules. For this reason, point c) of § 393 of Act no CXXX of 2016 on the Code of Civil Procedure (the new Civil Procedural Act, hereinafter: CPA)[47] introduced a new ground for retrial into the Hungarian set of procedural rules, namely that retrial may be requested if a judgement of the ECtHR declaring the violation to any of the rights included in the Convention or any of its ancillary Protocols is rendered. This extraordinary legal remedy is an individual instrument of rights protection. The claimant for retrial may only refer

rules of international legislation and furthermore ensures the concordance of undertaken international duties with the domestic law.

44 HCC Decision no 4/1997. (I. 22.).

45 HCC Decision no 30/1990. (XII. 15.).

46 Article 13 of the Convention.

47 Hereinafter as: CPA.

to a judgement delivered in his own case. In other words, a reference made to the general practice of the ECtHR may not form a basis for retrial even if the ECtHR declares the violation of the Convention grounded on similar facts in favour of any other claimant. The conjunctive prerequisite to the retrial is that the legally binding judgement rendered in the case should be based on the same violation of right for which the judgment of the ECtHR applies. This means that retrial is strictly justified by the framework of the actual elimination of the injury, and any other further decisions made in any further proceedings can be eliminated from this framework, even if they are connected to the dispute. Another prerequisite to the retrial on request is that the claimant for retrial has not been granted any satisfaction of damages by the ECtHR, and thus the injury cannot be (or has not been) redressed by a satisfaction of damages. These last two prerequisites are alternative, which means that the recognition of any of these two is eligible for a reasoning underpinning the application for retrial which is submitted.

The general subjective deadline for the submission of the claim for retrial is six months calculated from the date on which the contested judgement or the decision carrying the effect of a judgement gained binding force. A motion for the equitable extension of this time limit may be submitted in case of missing this deadline through no fault of the interested party. Section (3) of § 395 of CPA declares five years as the general objective deadline, calculated from the date on which the contested judgement gained binding force. The novelty of the regulation is that – also in the case of a successful constitutional complaint and a retrial grounded upon the judgment of the ECtHR – the law breaks through the objective rule regarding the submission of the claim for retrial. The Constitutional Court of Hungary (hereinafter: HCC) has declared earlier that the objective deadline of five years starting from the date when the judgement gained binding force shall not apply to the claim for retrial proposed after a successful constitutional complaint, meaning that there is a possibility granted to get the constitutional complaint redressed via ordinary court proceedings.[48] The CPA sets the deadline for the submission of a claim for retrial grounded upon the judgment of the ECtHR according to an analogy derived from this rule. Section (3) of § 395 of the CPA still permits the submission of a claim for retrial within sixty days from the date of the ECtHR judgement even if five years have already elapsed since the coming into force of the contested judgement.

3.1.2. The Constitutional Complaint

Act no CLI of 2011 on the Constitutional Court (hereinafter: ACC)[49] has significantly broadened the possibilities for submitting a constitutional complaint.

48 HCC decision no 459/B/1999.

49 Hereinafter as: ACC.

The Fundamental Law of Hungary,[50] which entered into force on 1 January 2012, specifies several forms of a constitutional complaint, complemented by the detailed rules of ACC. Three types of the new constitutional complaint can be distinguished based on the above legislation. Legal literature distinguishes between the given subtypes by using adjectives. According to this, the 'old' type of constitutional complaint still exists unaltered [section (1) of § 26 of ACC] according to point c) of section (2) of Article 24 of the Fundamental Law of Hungary. This means that the person or organization affected by an individual case may turn to the HCC with a constitutional complaint if any of his rights set forth by the Fundamental Law of Hungary were violated by the court proceeding conducted via the application of a statute conflicting with the Fundamental Law of Hungary if the interested party has already exhausted all remedies available to him or if there are no remedies available at all. In this particular case, the constitutional complaint is a form of concrete (particular) norm control. On the basis of such a constitutional complaint, the HCC revises the concordance of the statute applied in the individual case with the Fundamental Law of Hungary. This particular constitutional complaint is to be filed within 60 days from the date of delivery of the decision by the competent court of first instance, addressed to the Constitutional Court.[51]

The second type of constitutional complaint [section (2) of § 26 of ACC] is denoted by the literature as 'prompt' (or, in other words, 'direct') constitutional complaint.[52] In this case, the examination of the legal provision can be initiated exceptionally even if there is no judicial decision. In this case, the injury invoked as grounds for the complaint shall be caused by the direct application of a statute conflicting with the Fundamental Law of Hungary or by its coming into force, and there should be no proceeding in course which would be capable of efficiently redressing the given injury. This particular constitutional complaint can be initiated within 180 days directly at the Constitutional Court.

The third type of constitutional complaint is used in a restrictive sense and called a 'genuine' (or 'proper') constitutional complaint (§ 27 of ACC), when the

50 For more details, see: Csehi 2014. 111–135.

51 It shall be pragmatic to note here that, although they are frequently confused, this form of legal remedy is not equal to another concrete norm control proceeding [ACC 25. § (1) & 37. § (2)] when the HCC's proceeding commences upon the initiation of a juror, as prescribed by Article 24. (2) point b) to the Fundamental Law of Hungary. It is the right of any juror to initiate the proceeding of the examination of compliance with the Fundamental Law of Hungary (and an international treaty) of the legal rule (a common law instrument of organization regulation or a legal coherence provision) at the proceeding being conducted in front of it, which they are obliged to apply. In these cases, the court has the right to suspend its own proceeding until the decision of the HCC. Following the decision of the HCC, the court may only draw its own provision by the evaluation of the result of this decision. It is an instance of the independent initiation by a juror, when he should apply such rule of law, the conflict of which was already declared by the HCC before. In this instance, the juror may also turn to the HCC in order to request the prohibition of the application of such legal rule in the specific case.

52 Trócsányi–Schanda 2014.

initiator may appeal against the judicial decision conflicting with the Fundamental Law of Hungary,[53] and not the legal provision upon which the decision is grounded. According to point d) of section (2) of Article 24 of the Fundamental Law of Hungary, the person or organization affected in an individual case may address a constitutional complaint to the HCC if any of his rights ensured by the Fundamental Law of Hungary were violated by the decision rendered regarding his case or any other decision rendered which ceases the court proceeding and the initiator has already exhausted all of the legal remedies available to him, or if there are no legal remedies available at all.[54] This particular constitutional complaint is to be submitted within 60 days from the date of delivery of the decision at the competent court of first instance, addressed to the Constitutional Court.

It is frequent that the initiators appeal against the judicial decision based on both section (2) of § 26 and § 27 of ACC at the same time. This is possible – so, in this way, the assessment of combined or alternate complaints can be carried out in front of the HCC (this competence was already included in the former act on the constitutional court, as well). § 28 of the ACC allows transposition for the HCC even if the claimant has only grounded his constitutional complaint upon either section (1) of § 26 or § 27 of ACC.[55]

The transformed constitutional complaint is an ex post instrument of legal remedy in constitutional law. Since the HCC is not a forum for resolving appeals, situated within the system of ordinary courts of law, the constitutional complaint cannot have as its scope the revision of either the legality or the merits of any judicial decision rendered. Moreover, the constitutional complaint against a court decision may not be considered as a remedy tool for all of the rights violated by the (already) non-litigable judicial decisions inside the judiciary organization either.[56] The HCC examines whether the court decision or the applied legal provision infringes upon any of the rights of the claimant that are guaranteed by the Fundamental Law of Hungary.

Taking into account all of the constitutional complaint proceedings carried out with relevance so far, it can be stated as a tendency that, based on § 29 of ACC, the HCC accepts a constitutional complaint in case the court decision was substantially influenced by a violation of the Fundamental Law of Hungary or in case of an essential constitutional law matter. This legal remedy is indeed also a peculiar ex-ante type of tool for the protection of constitutional rights when we examine its impacts. Consequently, a certain fundamental law approach should originate from the transformed constitutional complaint for ordinary courts which should adhere to the conclusions of the HCC, expressed when

53 For more details, see: Csehi 2017. 17–32, Csehi 2013. 157–180.
54 HCC decision no 33/2012 (VII. 17.).
55 HCC decision no 19/2015 (VI. 15.).
56 HCC order no 3018/2013 (I. 28.).

resolving the constitutional complaint.[57] This particular feature of the genuine constitutional complaint also results in the consequence that the constitutional demands are transposed into the system of ordinary jurisdiction. In other words: the interpretation of law, in conformity with the Fundamental Law of Hungary (such as the demand described in Article 28 to the Fundamental Law of Hungary), becomes enforceable within the system of the genuine constitutional complaint.[58] The role of legal interpretations, rendered in constitutional judicial practice – even as an instrument of rights protection[59] – becomes part of the practice of courts in ordinary jurisdiction.[60]

In the cases of the first (old constitutional complaint) and third (genuine constitutional complaint) type of the constitutional complaint, the ordinary courts may have some duties both during the commencement of the proceedings and following the closure of the proceedings in front of the Constitutional Court. Therefore, the rules of the Hungarian Civil Procedural Act no III. of 1952 has already contained provisions since 1 January 2012, governing the rules of procedure for these cases. The substantive elements of this regulation have been adopted by the new CPA. Both types of constitutional complaint may be submitted at the competent court of the first instance. Once the HCC has accepted the claim as grounded in accordance with section (1) of § 26 and/or § 27 of ACC in the course of a proceeding over a constitutional law complaint, it may decide to annul the act, legal provision, or court decision violating the Fundamental Law of Hungary. In case of annulling an act or a legal provision, the main rule is ex nunc binding force of the decision; exceptionally, the annulling decision may be rendered with ex tunc binding force, as well. As another exception, the annulment may also be valid for the future (pro futuro). In this case, the rendered HCC decision marks a future date when the annulment of the norm conflicting with the Fundamental Law of Hungary shall take effect. This shall occur in cases when the immediate annulment would result in severe injury to the rule of law.

It is derived from the practice of the HCC that it can determine constitutional requirements as legal consequences of equal range.[61] In accordance with the legal practice already developed before 2012, in such cases, HCC declares the constitutional requirements via its decision, which originates from the regulation of the Fundamental Law of Hungary and enforces the implementation of the provisions of the Fundamental Law of Hungary, which the application of the examined legal provisions in the judicial proceeding must be compatible with. The ex officio application of this particular legal consequence, based on section (3) of

57 Orbán 2016. 13.
58 Balogh–Marosi 2012. 79.
59 Gombos 2014a. 123–134, 2014b, 2015. 603–613.
60 Jakab 2011.
61 E.g. HCC decision no 12/2015 (V. 14.) on the specification of a client to the administrative proceeding.

§ 52 of ACC, is to be recognized especially in such cases when multiple interpretations of the norm are possible and only a part of the interpretation (judicial practice) is incompatible with the provisions of the Fundamental Law of Hungary. In such cases, the redressing of the violation of fundamental rights after a successful constitutional complaint is enabled without the annulment of the legal provision, with the exclusion of the interpretations beyond the constitutional framework. Also, in case a constitutional requirement is set and the ordinary court is designated to redress the injury, in individual cases, the competence of the HCC extends to setting out the constitutional framework for the interpretation of a legal norm, by excluding certain interpretations.

According to section (1) of § 26 of ACC, the HCC may also bar the application of a legal norm in cases of successful constitutional complaints, typically regarding legal provisions that have lost their binding force but are still applicable in individual cases. This has an *inter partes* force on the individual case, meaning that the HCC's decision makes the provisions of the norm inapplicable without annulment (which may literally not be possible in the case of legal provisions that have lost their binding force) in the given case.

In cases of successful constitutional complaints defined by section (1) of § 26 of ACC, the HCC can furthermore declare a conflict with the Fundamental Law of Hungary caused by the neglect of a duty to legislate. This legal consequence can have an impact on legislation, on the body that has committed the failure, but it shall bring no legal consequence as an individual legal remedy in the concrete case – as a main rule – upon the proceeding. It should, nevertheless, be noted that if upon dual legal basis the HCC decides for the annulment of a court decision grounded on a conflict with the Fundamental Law of Hungary caused by a neglect of the duty to legislate, then, in the case of ordering the initiation of a new proceeding made by the Curia of Hungary (which shall determine the tools for remedy), it must be taken into account that on the basis of a conflict with the Fundamental Law of Hungary manifested by neglect of duty the HCC marks a deadline for the fulfilment of this duty for the legislator to perform its legislative activity. If the so formulated new regulation applies also to the judicial proceedings in progress, the jurisdiction may be conducted by taking into account all possible means of individual remedy.[62]

Apart from the main rule of the legal consequence of a conflict with the Fundamental Law of Hungary caused by failure of duty, there is the obligation to conduct proceedings in front of ordinary courts, directly generated from a legal consequence determined by the HCC. This is why it was necessary for the new CPA to set up procedural law rules in relation to this. It is a common rule that the Curia of Hungary is both entitled and obliged to determine the procedural tools for the remedy regarding the constitutional complaint, regardless of either the

62 HCC decision no 19/2015 (VI. 15.).

level of the court making the decision that has to be annulled or the type of the legal provision to be annulled, which is applicable before a court.

If the HCC annuls an act or a legal provision in a constitutional complaint proceeding in such a way that – due to another decision of the HCC – it cannot be applied in the case giving the reason for the proceeding of the HCC or if it declares that the court decision delivered in the individual case violates the Fundamental Law of Hungary and annuls it, it can become necessary to determine the order of the remedy of the constitutional complaint in ordinary jurisdictional competence. The competence of the HCC shall cover the annulment of a legal provision and a court decision, whereas in such cases, on the basis of the decision made by the HCC as well as via the appropriate application of the relevant procedural rules, the procedural instruments of the remedy of the constitutional complaint must be defined by the Curia of Hungary.[63]

The different ways of legal remedy can be identified based on whether HCC has annulled a legal provision of substantive law or procedural law, a court decision or a decision of another authority revised by a court decision. As instruments of remedy, in terms of both judiciary proceedings and proceedings of other authorities, retrial (based on a special reason for the renewal of litigation), reopening of the entire proceeding or only the part of it causing the violation may be considered.

If the HCC has annulled a legal provision or act of substantive law and there has been exclusively a litigation or non-contentious proceeding in progress, the Curia of Hungary notifies the initiator of the complaint that he can file a claim for retrial within thirty days at the competent court of the first instance [point a) of section (2) of § 427 of the CPA]. However, even in such a case, retrial is not automated as it is subject to the claimant's submission of his claim (following the above notification). The deadline for submission of the claim for retrial is to be calculated to commence on the date of receipt of the notification of the Curia of Hungary. Some special procedural rules shall apply to retrial, considering the protection of fundamental rights. The permissibility of retrial in these cases – even without a decision made specifically in this context – is prescribed by law. The law provides for an exception to the rule of the five-year objective deadline provided for the submission of the claim for retrial[64] since there is a possibility to submit the claim for retrial within thirty days from receipt of the notification of the Curia of Hungary even if the five-year deadline has already passed, calculated from the date on which the judgement gained binding force.

If the HCC has annulled a legal provision or any act of procedural law, the Curia of Hungary determines the applicability of the procedural provision deriving from the decision of the HCC with the appropriate application of relevant procedural rules. If necessary, the Curia of Hungary shall order the reconduction of that

63 CPA point no 427. § (1).
64 HCC decision no 459/B/1999.

section of the proceeding, the outcome of which could have been affected by the application of the legal provision violating the Fundamental Law of Hungary. Simultaneously, it shall repeal the decision ending that section of the proceeding.[65]

If the HCC has annulled a court decision, the Curia of Hungary – based on the decision of the HCC – shall order the competent court of first or second instance to conduct a new proceeding and render a new decision or shall order the delivery of a new decision in the subject of a claim for judicial revision [point c) of section (2) of § 427 of the CPA]. If the HCC has also annulled the decision of another authority revised by a court decision along with the annulment of the court decision itself, the Curia of Hungary shall notify the authority involved in order to ensure that all of the required measures are taken, along with sending the HCC's decision to the authority. The Curia of Hungary shall simultaneously notify the claimant, as well [point d) of section (2) of § 427 of the CPA].

If the HCC has annulled a court decision, the Curia of Hungary is obliged to decide – based on the decision of the HCC – which institution should be ordered to reconduct a new proceeding: either the competent court of the first or second instance[66] or the authority having made the decision revised by a court decision. The chosen institution shall be notified with the purpose of ensuring that all the necessary measures are taken.[67] It must be stressed that the HCC shall only annul the court decision and cannot provide the court with any instructions or directives in addition to that.

3.1.3. Revision

Revision as a traditional instrument of protection of rights is a form of litigation remedy to be initiated at the judicial forum of the highest level in the system of ordinary jurisdiction, which is the Curia of Hungary. The role of the supreme judicial forum can be described by two traditional functions. On the one hand, it is responsible for directing the application of law, the establishment and sustainment of legal coherence as well as the fulfilment of its public duties (legal coherence is the main public law function of supreme courts). On the other hand, it makes individual decisions in cases submitted to it, in which it safeguards the rights of the parties (safeguarding of rights is the main private law function

65 CPA point no 427. § (2) b).

66 HCC decision no 19/2015 (VI. 15.).

67 EBH 2004. 1078. While carrying out the functions delegated under Section (3) of Article 25 of the Fundamental Law of Hungary, the Curia of Hungary shall adopt uniformity decisions, perform jurisprudence analysis of cases resolved by final decision, issue decisions on principle of the Curia, and publish court decisions which set out principles of legal interpretation. The Curia of Hungary shall adopt a decision on principle in a case that concerns the majority of the population or that is of high importance with respect to the general public. This EBH is one of the published principle decision collections of the Curia.

of supreme courts).[68] The activities deriving from the legal coherence function dominate since the superior judiciary forums supervise the jurisdictional activity of lower courts, ensuring the coherence of the application of law by the full set of instruments available. They release professional directives, conduct legal practice analyses and judge over cases with outstandingly important consequences in terms of the coherence of jurisdiction or cases of major importance to society. The safeguarding of rights as a function is also significant, it is needed for the supreme judicial forum to be capable of meeting the requirements of its assignments deriving from its supreme function. The distinctive feature of revision as an extraordinary remedy is that it is not an absolute right.[69]

Revision can be described as an extraordinary remedy to be used against judgements with ultimate legal binding force. It is like an appeal by nature but with regard to the primary function of supreme judicial forums, it is a strictly restricted type of remedy the evaluation of which belongs to the competence of the supreme judicial forum. In the course of the creation of the new CPA, revision has been intended to be converted into a more efficient legal institution. This conversion was influenced by international experience (through comparative analysis) and the legal practice of the Court of Justice of the European Union (CJEU)[70] through the efficient enforcement[71] of the function of preliminary ruling proceedings,[72] especially in the field of fundamental rights.[73] This was meant to assure the real and unified implementation of EU legislation.[74]

3.1.3.1. International Overview

The most frequently used filters in several countries, which can be justified by constitutional reasons regarding revision, are the restriction of cases on the basis of their value, according to a given threshold, and their importance

68 See e.g.: Bobek 2009. 33–58, Domej 2014. 277, Galič 2014. 292.

69 As per the recommendation of the Committee of Ministers to the Council of Europe on the implementation and the improvement on the pursuing of legal remedy proceedings in civil and commercial law fields, the addressing to the court of third instance (to supreme judicial forums) must be restricted to such cases in which the third-level revision is justified, for instance, which are immanent to the development of law or that facilitate the coherence of the application of statutory acts. This approach is reflected through Article 25 of the Fundamental Law of Hungary and also through the regulations of the Member States of the EU.

70 See e.g.: Tatham 2006. 148–216.

71 For more details, see: Arts–Lenaerts–Maselis 2010; Lenaerts–Maselis–Gutman 2014.

72 For more details, see: Barnard et al. 2013.

73 Schermers–Waelbroeck 2001.

74 For more details, see: Clergerie–Gruber–Rambaud 2016, Craig–de Burca 2015, Barnard–Peers 2017, Arndt–Fischer–Fetzer 2015, Bieber–Epiney–Haag–Kotzur 2016, Borchardt 2015, Fastenrath–Groh 2016, Frenz 2016, Hakenberg 2015, Haratsch–König–Pechstein 2016, Hemmer–Wüst–Hutka 2016, Herdegen 2016, Hobe 2014, Oppermann–Classen–Nettesheim 2016, Streinz 2016, Thiele 2016, and Terpan 2014.

from the perspective of the legal coherence aspect. The first technique ensures cases of small value that do not reach the supreme judicial forum. The second one consistently allows only those cases to reach the court which are of core relevance to legal coherence. Civil law procedural systems usually combine these two techniques.[75]

Only cases conveying significant legal matters or which are essential to legal coherence or the further development of legal practice may be brought in front of the Federal Supreme Court of Germany.[76] The Austrian litigation order[77] applies the filter of a value threshold and the legal coherence aspect combined. Cases under EUR 5,000 as the value of the subject matter of litigation may not reach the Austrian Supreme Court. Cases between a value of EUR 5,000 and 30,000 may only gain admissibility if they convey a significant legal matter. Cases with a subject matter valued above EUR 30,000 may be subject to revision regardless of their importance for legal coherence.[78] Similarly to the German solution, the rules of civil procedure of Scandinavian states exclusively allow the admissibility of a case if it pertains to a significant legal matter.[79] As per the recently reformed Slovenian litigation law,[80] cases over EUR 40,000 in value of their subject matter may be brought in front of the supreme judicial forum without any explicit permission. However, under this threshold, it is only the cases essential to legal coherence or the further development of legal practice that may gain admissibility to the Slovenian Supreme Court.[81]

It is a common feature that the fulfilment of the prerequisites and the filtering criteria must be examined before the examination of the case in relevance. The preparation of the cases is divided into two phases. First, their admissibility must be tested,[82] and the ordinary preparation of the case may only happen thereafter if revision is admissible. It occurs that during the first phase of the preparation a separate set of judges cooperates. In the case of mandatory admission, the case shall be examined exclusively regarding the other criteria of admissibility by the courts. The supreme judicial forums using the legal coherence filtering method have found their consistent practice regarding the determination of the criteria when it

75 It must be noted that the method of restriction has recently moved from the application of the subject matter value threshold to the legal coherence aspect filtering.

76 ZPO 543. §.

77 Austrian civil procedural act (hereinafter: Özpo).

78 Özpo 502. §.

79 To convey a significant legal matter in these states means the cases that include significant theoretical questions in terms of coherent jurisdiction and the coherence of law and which divert from the theoretical directives issued by the supreme judicial forum, etc. On this, see: Domej 2014. 277.

80 Slovenian civil procedural act (hereinafter: ZPP-D).

81 ZPP-D 367. §

82 Typically: through an examination focusing on legal coherence, it must be clarified whether the provision shows any diversion from the decisions of the supreme judicial forum.

is needed to revise a case in order to preserve legal coherence.[83] It is important to stress that admission is no discretional judicial decision. The filtering criteria set on the level of statutory law must be accompanied by a consistent practice.

3.1.3.2. The Hungarian Rules of Revision

The new CPA has changed the rules[84] on decisions excluded from revision and has introduced an admission system that enables revision in certain case groups actually excluded from revision, on the basis of an individual permit. Due to this, objectively excluded cases are to be treated separately from relatively excluded cases. In the case of a relatively excluded revision, it is not only the unlawfulness of the decision that must be referred to in the application for revision by the applicant, but the applicant must elaborate and justify the existing conditions thereof in order to achieve admission. The Curia of Hungary decides over the admissibility of these revisions. The law prescribes the mandatory requirements of the application for admission.[85] In case there is a failure to suffice these, the application must be rejected. The Curia of Hungary judges the application for admission outside of trial, in a council of three. The proceeding on the judging of the application for admission in front of the Curia of Hungary divides into two phases: the decisions on admission and on revision in relevance are made separately.

3.1.3.3. The Filtering System Used for the Relatively Excluded Revision in Hungary

By enabling a broad framework of legal interpretations on the conditions set to the admission of revision, the Civil Department (which is named: 'College')[86] of the Curia of Hungary rendered a Civil Department Opinion on 13 November 2017,[87] dedicated to supplying a set of directing criteria relating to the unified

83 See e.g. Gottwald 2008. 87–106.

84 For more details, see in the new commentaries of the CPA, e.g. Petrik 2017, Varga–Éless 2016, Wopera 2017a, or Wopera 2017b.

85 These conditions are the following, based on point no 409. § (2) to the new CPA: the Curia of Hungary grants the permission for the revision if the examination over the breach of law affecting the relevance of the specific case is justified by the coherence of the legal practice or its further development, the extraordinary weight of the legal matter raised, and also its social weight in lack of a decision having been made on secondary judiciary level on this matter – the need for the preliminary ruling proceeding of the CJEU or a provision of a judgement that is divergent from the judicial practice promulgated by the Curia of Hungary.

86 A college is a body of judges handling specific types of cases. The colleges of the Curia shall comprise the judges of the Curia and the heads of the same colleges of the courts of appeal. The colleges shall form opinions in several professional questions which are recommended but not obliged for application.

87 Civil Department Opinion no 2/2017 (XI. 13.) on certain queries re: the admission of the revision (hereinafter as: Civil Department opinion).

filtering system to be used when processing claims for revision and establishing their admissibility. This opinion aimed to facilitate the proceeding of the parties and their legal counsels by considering the aspects of human rights and constitutionality, devoted to establishing a consistent as well as coherent practice. It takes into account the experience of the formerly used admission system and also several foreign admission systems. As a separate reasoning, with regard to the demand for a preliminary ruling by the CJEU, revision is permissible in cases which are relatively excluded if the Curia of Hungary states that the issue raised by the applicant is to be forwarded to the CJEU. It is a procedural legal prerequisite of the admission of revision that the party already objected during the course of the proceeding, stating that the legal interpretational issue raised by him should be forwarded to the CJEU but the court rejected this or – despite the objection of the party – failed to make a decision regarding the motion for a preliminary ruling to be requested of the CJEU.[88] As a main rule in Hungary, the Curia is to be regarded as the court responsible for fulfilling the obligation to initiate the preliminary ruling proceeding as it is declared by Article 267 (3) to the Treaty on the Functioning of the European Union (TFEU).[89] The reason for granting admission, which is bound to the obligation flowing from EU legislation and was adopted by the revision admission system, serves a twofold purpose. The Curia of Hungary as the ultimate judiciary forum – as the main rule – may not fail to address the CJEU. Hence, in this case, one of the purposes of the admission of revision is to ensure that the Curia of Hungary can fulfil its duty as the court acting on the highest level to initiate the preliminary ruling proceedings. This reason for the granting of admission does also enable the CJEU to declare the error in this legal interpretation through the framework of its preliminary ruling proceeding if the legally binding judgement violates EU law due to the misinterpretations of EU legislation (consequently, it leads directly to the violation of the unified application of EU law). This could mean that the application of the legal provision of the EU or the lack of its application has impacted (or could impact) the case in relevance and also that it is the initiation of a preliminary ruling proceeding that is required for the interpretation of the given legal provision of EU law concerning the given legal issue.

According to the Civil Department opinion, however, the admission of revision shall not be automated even if referring to the above rule with respect to Article 267 (3) of the TFEU, as to which the prescribed duty is not an absolute duty of the supreme forum. There is no obligation of reference once the Curia of Hungary has found that the raised issue is non-relevant to the judgment of the legal dispute or if there is already a pursuant legislative practice of the CJEU in place for the affected EU provision or if the application of EU law is so obvious that it eliminates

88 Point 4 of Civil Department opinion.
89 Hereinafter as: TFEU.

any reasonable doubt.[90] It is going to be the judicial practice which evolves on the basis of the Civil Department opinion that will show the borderline for the effectiveness of the rule that is demanded for the admission that the party already stressed in the course of the proceeding that the legal interpretational issue raised by him should be forwarded to the CJEU but the court rejected this or – despite the request of the party – failed to make a decision thereof. Several references have already been made in this respect,[91] some of which are still ongoing, and the professional legal literature is rather disunified on this topic. In my view, the guidelines of the CJEU related to the obligations of applying EU law in an ex officio manner can be decisive in the progression of this practice.[92]

4. Conclusions

As we have seen, the possibilities granted by the CPA and the norms governing the activity of the HCC provide a three-pronged approach to the correction or annulment or correction of judicial decisions which infringe upon the fundamental rights of the parties to the procedure in which they were rendered.

While retrial is an option for eliminating errors of procedure and the application of substantive law, which have resulted in the infringement of fundamental rights established by the ECtHR, the constitutional complaint in its various forms is meant to impose the supremacy of the Fundamental Law not just upon the legislative power but also on the judiciary to ensure that judicial decisions are not exempt from direct constitutional review. Finally, the procedure of revision is meant to guarantee unitary application of the law in cases significant to the development of jurisprudence.

90 The judgment drawn in the case of CILFIT no 283/81 (ECLI:EU:C:1982:335).

91 For example, the case of Peterbroeck no C-312/93 may be mentioned (C-312/93. Peterbroeck, Van Campenhout & Cie SCS v the Belgian State. ECLI:EU:C:1995:437), yet a conclusion to some extent in opposition to this can be drawn from the decisions of the CJEU made in the field of consumer protection [e.g. joined cases of C-240-244/98, Océano Grupo Editorial SA v Rocío Murciano Quintero (C-240/98.) and Salvat Editores SA v José M. Sánchez Alcón Prades (C-241/98.), José Luis Copano Badillo (C-242/98.), Mohammed Berroane (C-243/98.), and Emilio Viñas Feliú (C-244/98.). ECLI:EU:C:2000:346].

92 The CJEU in its joined cases of van Schijndel and van Veen nos C-430/93 and C-431/93 (C-430/93. Jeroen van Schijndel and Johannes Nicolaas Cornelis van Veen v Stichting Pensioenfonds voor Fysiotherapeuten. ECLI:EU:C:1995:441) unequivocally acknowledged the boundaries marked by the peculiar features of national civil proceedings with respect to the national courts' 'act of its own motion' examinations. This judgement proclaimed that the law of the Union does not prescribe for the national courts the 'act of its own motion' consideration of the argument on the breaching of the regulations of the Community in case the examination of this argument would oblige them to suspend their respective binding force to the claim if thereby they would exit the border of the legal dispute as determined by the parties, by considering such other facts and circumstances which shall lead beyond all of those upon which the party in whose interest the application of the aforementioned decrees are based on his claim.

The CPA has not yet generated the high number of case-by-case solutions necessary to draw deep conclusions regarding the merits and perhaps the shortcomings of its rules on procedural remedies; however, such conclusions are forthcoming in the future.

References

ARNDT, H.-W.–FISCHER, K.–FETZER, Th. 2015. *Europarecht*. Heidelberg.

ARTS, D.–LENAERTS, K.–MASELIS, I. 2010. *Procedural Law of the European Union*. London.

BALOGH, Zs.–MAROSI, I. 2012. Vonzások és taszítások bíróságok között; Gondolatok az alkotmányjogi panaszról. *Alkotmánybírósági Szemle* 2012/1: 79.

BARNARD, C. et al. 2013. *The Court of Justice and the Construction of Europe: Analyses and Perspectives on Sixty Years of Case-law / La Cour de Justice et la Construction de l'Europe: Analyses et Perspectives de Soixante Ans de Jurisprudence*. Hague.

BARNARD, C.–PEERS, S. 2017. *European Union Law*. Oxford.

BIEBER, R.–EPINEY, A.–HAAG, M.–KOTZUR, M. 2016. *Die Europäische Union – Europarecht und Politik*. Baden-Baden.

BOBEK, M. 2009. Quantity or Quality? Reassessing the Role of Supreme Jurisdictions in Central Europe. *American Journal of Comparative Law* 57(1): 33–58.

BORCHARDT, K.-D. 2015. *Die rechtlichen Grundlagen der Europäischen Union: eine systematische Darstellung für Studium und Praxis*. Vienna.

CLERGERIE, J.-L.–GRUBER, A.–RAMBAUD, P. 2016. *L'union européenne*. Paris.

CRAIG, P.–DE BURCA, G. 2015. *EU Law: Texts, Cases and Materials*. Oxford.

CSEHI, Z. 2017. A német alkotmányjogi panasz hatása – biztató kezdetek a magyar gyakorlatban. *Acta Universitstis Szegediensis – Acta Iuvenum* 2017/2: 17–32.

2014. Foundation Law in Hungary. In: *Developments in Foundation Law in Europe*. Heidelberg: 111–135.

2013. Az alkotmányjogi panasz új magyar szabályozása – magánjog és a német típusú alkotmányjogi panasz. In: *Alkotmányozás Magyarországon 2010–2011*. Budapest, Pécs: 157–180.

DOMEJ, T. 2014. What Is an Important Case? Admissibility of Appeals to the Supreme Courts in the German-Speaking Jurisdictions. In: *Nobody's Perfect – Comparative Essays on Appeals and Other Means of Recourse against Judicial Decisions in Civil Matters*.

DOUGAN, M. 2004. *National Remedies before the Court of Justice. Issues of Harmonisation and Differentiation*. Oxford.

FASTENRATH, U.–GROH, Th. 2016. *Europarecht*. Stuttgart.
FRENZ, W. 2016. *Europarecht*. Berlin.
GALIČ, A. 2014. Reshaping the Role of Supreme Courts in the Countries of the Former Yugoslavia. In: *Nobody's Perfect – Comparative Essays on Appeals and Other Means of Recourse against Judicial Decisions in Civil Matters*: 292.
GOMBOS, K. 2015. The Problems of Multilingual European Law. *Acta Universitatis Szegediensis – Acta juridica et politica* 77 (Ünnepi kötet Dr. Tóth Károly címzetes egyetemi tanár 70. születésnapjára): 603–613.
2014a. The Levels and Steps of the Judicial Protection Arising from the European Law. *Acta Universitatis Szegediensis – Acta Juridica et Politica* 77 (Ünnepi kötet Dr. Bodnár László egyetemi tanár 70. születésnapjára): 123–134.
2014b. *The Methods of Judicial Protection in the European Union*. Saarbrücken.
GOTTWALD, P. 2008. Review Appeal to the German Federal Supreme Court after the Reform of 2001. In: *Appeals to the Supreme Courts in Europe*: 87–106.
HAKENBERG, W. 2015. *Europarecht*. Munich.
HARATSCH, A.–KÖNIG, C.–PECHSTEIN, M. 2016. *Europarecht*. Tübingen.
HEMMER, K.-E.–WÜST, A.–HUTKA, R. 2016. *Europarecht – Das Prüfungswissen für Studium und Examen*. Würzburg.
HERDEGEN, M. 2016. *Europarecht*. Munich.
HOBE, S. 2014. *Europarecht*. Munich.
JAKAB A. 2011. A bírói jogértelmezés az Alaptörvény tükrében. *JeMa* 2011/4.
LENAERTS, K.–MASELIS, I.–GUTMAN, K. 2014. *EU Procedural Law*. Oxford.
OPPERMANN, Th.–CLASSEN, C. D.–NETTESHEIM, M. 2016. *Europarecht*. Munich.
ORBÁN, E. 2016. A bírói döntések ellen benyújtott alkotmányjogi panaszok tapasztalatai. *Iustum Aequum Salutare, Pázmány Law Working Papers* 2016/20: 13.
PETRIK, F. 2017. *Polgári eljárásjog. Kommentár a gyakorlat számára*. Third edition. Budapest.
SCHERMERS, H. G.–WAELBROECK, D. F. 2001. *Judicial Protection in the European Union*. Hague.
Streinz, R. 2016. *Europarecht*. Heidelberg.
TATHAM, A. F. 2013. *Central European Constitutional Courts in the Face of EU Membership. The Influence of the German Model in Hungary and Poland*. Nijhoff, Leiden, Boston.
2006. *EC Law in Practice: A Case-Study Approach*. Budapest.
TERPAN, F. 2014. *Droit et politique de l'Union européenne*. Brussels.
THIELE, A. 2016. *Europarecht*. Altenberge.
TRÓCSÁNYI, L.–SCHANDA, B. 2014. *Bevezetés az alkotmányjogba; Az Alaptörvény és Magyarország alkotmányos intézményei*. Budapest.

VARGA, I.–ÉLESS, I. (eds). 2016. *Szakértői javaslat az új polgári perrendtartás kodifikációjára*. Budapest.

WOPERA, Zs. (ed.). 2017a. *A polgári perrendtartásról szóló 2016. évi CXXX. törvény magyarázata*. Budapest.

(ed.). 2017b. *Kommentár a polgári perrendtartás szóló 2016. évi CXXX. törvényhez*. Budapest.